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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* M. SCOTT REICHARDT and W. BENJAMIN HERRINGTON

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Appeal 2009-006336  
Application 09/731,115<sup>1</sup>  
Technology Center 2400

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Decided: June 16, 2010

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Before ROBERT E. NAPPI, JOSEPH F. RUGGIERO,  
and MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The real party in interest is JPMorgan Chase Bank, N.A..

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to a system and method for providing enhanced advertising and merchandising opportunities through the integration of a passive television program guide with an interactive television program guide wherein advertisements are provided for passive programming and interactive applications (Abstract). In response to a user selecting a branded selectable option, such as an interactive graphic logo of the provider, a passive programming guide and interactive content are provided in a second display, replacing the first interactive application display (Spec. 27:28-29:30).

Claims 1 and 18 are exemplary:

1. A method for providing access to a passive program guide or barker channel and interactive content from an interactive application comprising:
  - providing a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content within a first interactive application display;
  - providing, in a second display replacing the first display, the passive program guide or barker channel and interactive content from the provider in response to a user selecting the option from the interactive application display; and
  - providing additional information on the interactive content in response to the user selecting the interactive content.
18. A method for providing advertisements within an interactive application implemented at least in part on user equipment comprising:

providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment;

displaying on the user equipment an alert icon overlaid on the currently displayed branded passive programming that indicates availability of additional information associated with the currently displayed branded passive programming;

providing a user associated with the user equipment with an opportunity to select the alert icon to indicate a desire to access the additional information; and

providing an interactive display on the user equipment in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Alexander            US 6,177,931 B1            Jan. 23, 2001

Gordon            US 6,481,012 B1            Nov. 12, 2002

Claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 stand rejected under 35 U.S.C. 102(e) as being anticipated by Alexander.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Appeal Brief (filed April 16, 2008), the Reply Brief (filed September 23, 2008), and the Examiner's Answer (mailed July 24, 2008) for their respective details.

## ISSUES

Appellants contend that the Examiner's interpretation of a barker channel is unreasonably broad (App. Br. 5-6). Appellants further contend that Alexander fails to show or suggest providing a passive program guide or

a barker channel and interactive content in response to selecting a product brand logo graphic (App. Br. 6). Moreover, Appellants contend that Alexander does not disclose that a first interactive display is replaced by a second display, wherein the entire Electronic Program Guide (EPG) display is replaced with a passive program guide or barker channel and interactive content (App. Br. 8).

With respect to claims 18-24, 46-52, and claims 74-84, Appellants contend that Alexander's disclosure of the change channel command inserted into the Vertical Blanking Interface when an advertisement is telecast does not meet the claim limitation of providing the user equipment with branded passive programming, wherein the branding occurs prior to sending the programming to the user equipment (App. Br. 9). Finally, Appellants contend that the advertisement must be associated with the brand and not the passive programming (App. Br. 9).

Appellant's contentions present us with the following four issues:

1. Is the Examiner's interpretation of the term "barker channel" as a "television program, video clip or other information associated with a particular channel" unreasonably broad?
2. Does Alexander disclose a method of providing access to a passive program guide or barker channel and interactive content in response to user selection of a product brand logo graphic for the provider of the passive program guide or barker channel?
3. Does Alexander disclose a first interactive display branded selectable option and interactive content that is replaced by a second display having a passive program guide or barker channel associated with the branded selectable option and interactive content?

4. Does Alexander disclose a method for providing advertisements within an interactive application wherein “a branded passive programming with an advertisement associated with a brand inserted into the passive programming [is provided] to the user equipment”?

## FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

### *The Invention*

1. According to Appellants, the invention relates to a system and method for providing enhanced advertising and merchandising opportunities through the integration of a passive television program guide with an interactive television program guide wherein advertisements are provided for passive programming and interactive applications (Abstract). In response to a user selecting a branded selectable option, such as an interactive graphic logo of the provider, a passive programming guide and interactive content are provided in a second display, replacing the first interactive application display (Spec. 27:28-29:30).

2. A “barker channel” is a promotional channel developed to advertise various premium channel and pay-per-view promotions (Spec. 1:21-24). A barker channel may display a full screen promotion of pay-per-view programs (Spec. 2:27-29). A “barker channel” is a passive video product (Spec. 3:1-2).

3. The system may provide passive programming branded with an advertiser’s brand. This programming may be branded by the source of the programming at the main facility 12, distribution facility 16, Internet service

system 61 or 235, or at any other suitable facility (Figs. 1, 2a, 2c, and 2e; Spec. 44, 10-14).

*Alexander*

4. Alexander discloses a virtual channel ad for promoting a current or future television program can be displayed in the grid guide 22 on tile 52. When the virtual channel ad is selected, the television program linked to the time and channel of the program in RAM can be watched or recorded by the viewer (Fig. 1; col. 5, ll. 5-12).

5. Alexander discloses that an ad window (14) for advertising a future telecast program is linked to the time and channel of the program in RAM to enable the user to watch and record the program automatically by selecting the window 14 and pressing the left action button. Ad window 16 serves to promote products and services wherein the ad is linked to more information about the product or service in RAM, so the viewer can read one or more pages about the product or service in window 16 by pressing an "info" key 40 one or more times. The ad may also be linked to the time and channel in RAM that an infomercial about the product or service will be telecast so the viewer can watch or record the infomercial automatically by pressing "select" key 42. The additional information is accessible to the user in the information box 24. In the alternative, text, graphics, or video clips may be displayed in windows 14, 16 or the entire screen. (Figs. 1 and 2; col. 4, ll. 28-43). Both the Virtual Channel Ad slots and the Ad Windows 14 and 16 advertise future-scheduled television programs, granting the user additional information using text or video clips (Figs. 1 and 2; col. 17, ll. 43-47).

6. Alexander discloses that the user interface in the EPG mode provides multiple windows. The first window displays the grid guide 22. Another window representing a picture-in-picture (PIP) window 12 displays the television program that the viewer was watching prior to entry into the EPG mode. The Ad windows 14 and 16 display advertising information. Each window may be graphic, textual, video, interactive, or any combination thereof. (Col. 13, ll. 46-55; col. 24, ll. 42-43).

7. Alexander discloses that windows 14 and 16 may include a logo illustrated as a graphic (col. 24, ll. 50-52).

8. Alexander discloses that highlighting either Ad Window 14 or 16 will cause additional text describing the product to be displayed in the (information) detail box 24 or an infomercial in the form of a video clip about the product being advertised may be watched by the user. In the alternative, an Ad Window can be interactive, wherein, for example, an Internet address of a web site containing information relevant to the ad may be displayed in the Ad Window as a web site address, as an icon, or in some other graphical presentation, such as a stylized "i" indicating additional interactive information. (Col. 27, ll. 20-47).

9. Alexander discloses an internet mode wherein the EPG scheduling data, supplemental data, and/or advertising data may be accessed by direct link to one of a multiple EPG Internet web sites, such as the one for the TV Guide channel. The initial connect web site address may be supplied, for instance, through information transmitted to the viewer's television over the vertical blanking interval (the "VBI"). The user may choose from multiple EPG Internet web sites. Once the connection is established between the user's television and the Internet, the user has two-

way communication with the on-line Internet service provider of the EPG related information, wherein the user can navigate through the EPG. (Col. 8, ll. 36-64).

10. Alexander discloses that the “EPG can select advertisements from various possible locations, including but limited to: a library of advertisements stored at the viewer's terminal in RAM that have been downloaded through the VBI, stored at the head-end, or accessible through an EPG link to the Internet/World Wide Web. . . . advertisements can be assigned theme codes, profile codes, and other selection intelligence.” (Col. 34, ll. 10-25).

*Gordon*

11. Gordon discloses display screen 100 that is displayed over the entire television screen having a window that includes a video barker 120 (and associated audio barker) (Fig.1; col. 4, ll. 24-41).

#### PRINCIPLES OF LAW

Anticipation pursuant to 35 U.S.C § 102 is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of

ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

In an appeal from a rejection for anticipation, Appellants must explain which limitations are not found in the reference. *See Gechter v. Davidson*, 116 F.3d 1454, 1460 (Fed. Cir. 1997) ("[W]e expect that the Board's anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each *contested* limitation and satisfactory explanations for such findings.") (emphasis added). *See also In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006)

## ANALYSIS

### *Claims 1, 3-8, 29, 31-36, 57, and 59-64*

We select claim 1 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Claim 1 recites “providing a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content within a first interactive application display.” Claims 29 and 57 have similar claim limitations.

Appellants contend that the Examiner’s interpretation of a barker channel is unreasonably broad (App. Br. 5-6). Appellants contend that the claims must be given their broadest reasonable interpretation in light of the Specification. *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (App. Br. 5). Appellants contend that the Examiners’ finding that a barker channel is a “television program, video clip, or other information associated with a particular channel” is unreasonable because it is

inconsistent with the Specification and what is widely understood by those skilled in the art (App. Br. 6). Appellants contend that the Specification discloses that a barker channel is a dedicated *full screen* promotion television channel for pay-per-view programs and not just a television program or video clip associated with a particular channel as the Examiner has found (App. Br. 6, FF 2 (emphasis added)).

We are not persuaded by Appellants' arguments. We agree with the Examiner's finding that, read in light of the Specification, a "barker channel" is a passive video product having a television clip or advertisement of promoting a future program (Ans. 12-13, FF 2). Specifically, the Specification discloses that a barker channel, as a passive video product, is a promotional channel developed to advertise various premium channel and pay-per-view promotions (FF 2). In addition, the Specification discloses that the barker channel may be displayed on the entire screen, not that it is required to be displayed as a full screen promotion of pay-per-view programs (FF 2).

We agree with the Examiner's finding that the virtual channel ads disclosed in Alexander are likened to a barker channel, since they do promote current and future television programs (Ans. 13; FF 4). In addition, the Ad windows 14 and 16 disclosed in Alexander are analogous to a barker channel in that they serve to promote and advertise future-scheduled television programs by making additional information accessible to the user in the information box 24 using text or video clips displayed in windows 14, 16 or the entire screen (FF 5).

Appellants further contend that Alexander fails to show or suggest providing a passive program guide or a barker channel and interactive

content in response to selecting a product brand logo graphic (App. Br. 6). Moreover, Appellants contend that Alexander does not disclose that a first interactive display is replaced by a second display, wherein the entire EPG display is replaced with a passive program guide or barker channel and interactive content (App. Br. 8).

The Examiner finds that Alexander discloses an EPG screen having selectable interactive ads, a grid guide 22, and a picture-in-picture (PIP) window, wherein interactive icons having logo graphics of a provider (e.g. ABC, CBS, etc.) are displayed in the grid guide 22 (Ans. 4).

Regarding a second display replacing the first interactive application display, the Examiner finds further that Alexander discloses that when a user selects by highlighting a portion of the display associated with a channel on the grid guide, either a video, video clip, advertisement or detailed description is displayed in either the PIP window 12 or Ad window 14, 16 (Ans. 14, FF 6-8). As such, the Examiner finds that Alexander teaches that when a video, video clip, advertisement or information is provided on the display screen in response to the user selecting a portion of the first interactive application display screen, the first interactive application display is replaced with a second interactive display, meeting the claim limitation of “providing, in a second display replacing the first [interactive application] display” (Ans. 15).

We agree with the Examiner’s finding that Alexander discloses providing a branded selectable option having a product brand logo graphic or a provider of the passive program guide or barker channel and interactive content within a first interactive display (Ans. 14). Specifically, Alexander discloses that each window may be graphic, textual, video, or interactive.

(FF 6). In addition, Alexander discloses that windows 14 and 16 may include a logo (FF 7). Moreover, Alexander discloses that the Ad Window can be interactive, wherein, for example, an Internet address of a web site containing information relevant to the ad may be displayed in the Ad Window as a web site address, as an icon, or in some other graphical presentation, such as a stylized "i" indicating additional interactive information (FF 8). Therefore, Ad Windows 14 and 16 as disclosed in Alexander are capable of displaying "a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content."

We also agree with the Examiner's finding that Alexander discloses "providing, in a second display replacing the first [interactive application] display" (Ans. 15). Specifically, Alexander discloses when the Ad window 14 is selected, video or a video clip advertising a future program will be displayed in Ad window 14 (FF 5 and 8). Alexander discloses that each window may be graphic, textual, video, interactive, or any combination thereof (FF 6). Thus, the first interactive display of window 14 containing a graphic logo of a provider may be replaced with a second display having video and interactive content (FF 6, 7, and 8).

Furthermore, Alexander discloses an internet mode wherein the EPG scheduling data, supplemental data, and/or advertising data may be accessed by direct link to one of a multiple EPG Internet web sites, such as the one for the TV Guide channel (FF 9). As such, Alexander discloses that a user can navigate away from the first EPG interactive display having EPG scheduling information stored in RAM to a second EPG interactive display having EPG scheduling information from one of the various EPG Internet web sites

(wherein the second interactive display replaces the first interactive display) which meets all of the claim limitations of representative claim 1.

We therefore find no error in the Examiner's rejection of independent claims 1, 29, and 57 under 35 U.S.C. § 102, nor that of depending claims 3-8, 31-36, and 59-64 not separately argued with particularity, and we will sustain the rejection of these claims.

*Claims 18-24, 46-52, and 74-80*

We select claim 18 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Independent claim 18 recites "providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment." Claims 46 and 74 have similar claim limitations.

Appellants contend that the Examiner's finding of Alexander's disclosure of a change channel command inserted into the Vertical Blanking Interface when an advertisement is telecast, causing the television to tune to a particular channel does not meet the claim limitation of having the branded passive programming to be provided to the user equipment, wherein the branding must occur prior to sending the programming to the user equipment (App. Br. 9). Appellants contend further that the advertisement must be associated with the brand and not the passive programming (App. Br. 9).

The Examiner finds that the limitation of "providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment" is interpreted as providing the user chosen television program with an advertisement associated with the channel/provider of a chosen program and inserting the advertisement within

the display during the telecast of the chosen television program to the user television device (Ans. 16-17).

We agree with the Examiner that Alexander discloses “providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment.” Specifically, we note that the Appellants’ contention requiring that the *branding must occur prior to sending* the programming to the user equipment *is not recited in representative claim 18*. Appellants’ argument is thus not commensurate with the scope of the claim. In addition, the Specification discloses that the programming may be branded by the source of the programming, main facility 12, distribution facility 16, Internet service system 235, *or at any other suitable facility* (FF 3; emphasis added). Therefore, the program may be branded by the insertion of change channel command into the Vertical Blanking Interface to meet the claim limitation of “providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment.”

We find that Alexander discloses that the advertisement may be selected from various possible locations with various criteria (FF 10). Specifically, Alexander discloses that “the EPG can select advertisements from various possible locations, including but limited to: a library of advertisements stored at the viewer's terminal in RAM that have been downloaded through the VBI, stored at the head-end, or accessible through an EPG link to the Internet/World Wide Web. . . . advertisements may be assigned theme codes, profile codes, and *other selection intelligence*” (FF 10 (emphasis added)). Thus, the advertisements may be selected based upon the brand as required by the claim limitation.

We therefore find no error in the Examiner's rejection of independent claims 18, 46, and 74 under 35 U.S.C. § 102, nor that of depending claims 19-24, 47-52, and 75-80 not separately argued with particularity, and we will sustain the rejection of these claims.

#### CONCLUSIONS OF LAW

The Examiner's interpretation of the term "barker channel" as a "television program, video clip or other information associated with a particular channel" is not unreasonably broad.

Alexander discloses a method of providing access to a passive program guide or barker channel and interactive content in response to user selection of a product brand logo graphic for the provider of the passive program guide or barker channel.

Alexander discloses a first interactive display branded selectable option and interactive content that is replaced by a second display having a passive program guide or barker channel associated with the branded selectable option and interactive content.

Alexander discloses a method for providing advertisements within an interactive application wherein "a branded passive programming with an advertisement associated with a brand inserted into the passive programming [is provided] to the user equipment."

#### ORDER

The Examiner's rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 is affirmed.

Appeal 2009-006336  
Application 09/731,115

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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